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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/573,932	11/02/2006	Rephael Hof	26410-13952	5381		
758	7590	09/10/2009	EXAMINER			
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041				PATEL, YOGESH P		
ART UNIT		PAPER NUMBER				
3732						
MAIL DATE		DELIVERY MODE				
09/10/2009		PAPER				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/573,932	HOF ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	YOGESH PATEL	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 June 2009.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 40-52 and 76-82 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 40-52, 76-82 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 40-44, 46, 47, 51-52 and 81-82 are rejected under 35 U.S.C. 102(b) as being anticipated by Abel (2003/0211442).

Abel discloses an endodontic instrument (fig. 1) including a flexible member having a longitudinal axis and an initial cross-sectional area in a plane perpendicular to the longitudinal axis at each point along the longitudinal axis (fig. 1), the member being bendable along the axis and resiliently compressible in cross-sectional area such that, when inserted into a channel of cross-sectional area less than the initial cross-sectional area, the flexible member conforms to an internal shape of the channel ([0031-0032]). Note particularly the embodiment of Figures 6A -6D where the instrument is hollow with thin walls and made of superelastic material ([0048]), consequently it inherently has a degree of resilient compressibility making it capable of conforming to the shape of a root canal.

Regarding claim 41, Ni-Ti is shape memory material.

Regarding claims 42-44, Abel shows endodontic instrument having radially disposed elements with cutting edges (fig. 4A-D).

Claims 45 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abel as applied to claim 40 above, and further in view of Buchanan (5,752,825).

Abel discloses the invention substantially as claimed and further disclose the member being hollow (fig. 6a) except for the lattice like structure.

Buchanan teaches the instrument having such structure (col. 8, line 31). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Abel by providing lattice like structure as taught by Buchanan in order to allow larger diameter member to work around root canal curvatures that would be impossible with other materials.

Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abel as applied to claim 1 above, and further in view of Malmin (4,019,254).

Malmin teaches an instrument having plurality of radially disposed elements, a cutting edge being disposed on the distal ends of the radially disposed elements (fig. 1-6) and a longitudinal element connected to a plurality of circumferential element. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Abel by providing radially disposed elements as taught by Malmin in order to efficiently expand a channel or root canal. Malmin further provides abrasive surface 34 (fig. 8).

Claims 76-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abel as applied to claim 40 above, and further in view of Ura (5,941,706).

Abel discloses the invention substantially as claimed except for the member comprises a plurality of longitudinal elements extending generally parallel to the longitudinal axis, and a plurality of connecting elements interconnecting between the longitudinal elements

Ura teaches the member (figure 2) comprises a plurality of longitudinal elements 21 extending generally parallel to the longitudinal axis, and a plurality of connecting elements (e.g. 30) interconnecting between the longitudinal elements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Abel by providing such structure as claimed as taught by Ura to define the depth of the member (e.g. drill). Regarding claim 77, Abel discloses the flexible member being cylindrical.

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOGESH PATEL whose telephone number is (571)270-3646. The examiner can normally be reached on 8:00 to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YOGESH PATEL/  
Examiner, Art Unit 3732

/Ralph A. Lewis/  
Primary Examiner, Art Unit 3732